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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ALEX DANIEL TARABOCHIA, et al.,

10 Plaintiffs,

11 v.

12 F.B.I. Special Agent MICKEY ADKINS,
13 et al.,

14 Defendants.

CASE NO. C10-5197BHS

ORDER

15 This matter comes before the Court on Plaintiffs Alex Daniel Tarabochia, Bryan
16 Anthony Tarabochia, Joseph Burton Tarabochia, and Matthew Alexander Tarabochia's
17 ("Plaintiffs") motion to amend the complaint (Dkt. 65), Plaintiffs' motion for order to
18 release cell phone records (Dkt. 72), and Defendants Mike Cenci, Dan Chadwick, Brett
19 Hopkins and Brad Rhoden's ("Defendants") motions in limine (Dkt. 73). The Court has
20 considered the pleadings filed in support of the motions and the remainder of the file.

21 **I. PROCEDURAL HISTORY**

22 On June 1, 2010, Plaintiffs filed a complaint against Defendants Mickey Adkins¹,
23 Mike Cenci, Dan Chadwick, Brett Hopkins and Brad Rhoden. Dkt. 7 ("Complaint").
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27 ¹ On October 6, 2010, Plaintiffs informed the Court that they did not serve Agent Adkins
28 and that they would not be pursuing their claims against Agent Adkins. Dkt. 17 at 1-2.

1 Plaintiffs allege violations of their rights under the Fourth, Sixth, and Fourteenth
2 Amendments to the Constitution. *Id.*

3 On July 14, 2011, Plaintiffs filed a motion to amend their complaint as to damages.
4 Dkt. 65. Defendants did not respond.

5 On July 20, 2011, Plaintiffs filed a motion for an order to release certain cell phone
6 records. Dkt. 72. Defendants did not respond.

7 On July 22, 2011, Defendants filed motions in limine. Dkt. 73.

8 On August 9, 2011, the Court issued an order granting in part and denying in part
9 Defendants' motion for summary judgment (Dkt. 50). Dkt. 77. On August 11, 2011, the
10 Court issued an order striking the trial date and setting a dispositive motion deadline of
11 August 25, 2011. Dkt. 82.

12 **II. DISCUSSION**

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14 With regard to Plaintiffs' motion to amend, the Court should freely grant leave to
15 amend as justice so requires. Fed. R. Civ. P. 15. Moreover, Defendants failed to file a
16 brief in opposition to the motion. Therefore, the Court grants Plaintiffs' motion (Dkt. 65)
17 and Plaintiffs' claim for damages shall include a claim for costs and attorneys' fees.


18 With regard to Plaintiffs' motion for an order to release cell phone records,
19 Plaintiffs seek Defendant Chadwick's cell phone records from Verizon Wireless.
20 Plaintiffs argue that the records will be used to impeach Defendant Chadwick's testimony
21 in this matter. At this point of the proceeding, it appears that the remaining issue can be
22 addressed as an issue of law. When considering a motion for summary judgment, the
23 Court may not "make credibility determinations with respect to statements made in
24 affidavits" *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630
25 (9th Cir. 1987). Therefore, because evidence regarding the credibility of a defendant may
26 be irrelevant to the remaining issue in this case, the Court denies Plaintiffs' motion
27 without prejudice.
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1 With regard to Defendants' motions in limine, the Court denies the motions
2 without prejudice and Defendants may renege the motions if this matter is reset for trial.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Plaintiffs' motion to amend the complaint
5 (Dkt. 65) is **GRANTED** and that Plaintiffs' motion for order to release cell phone records
6 (Dkt. 72) and Defendants' motions in limine (Dkt. 73) are **DENIED without prejudice**.

7 DATED this 31st day of August, 2011.

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10 BENJAMIN H. SETTLE
11 United States District Judge
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